

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

DENNIS R. HAACK)	CV 04-196-M-DWM
)	
Petitioner,)	
)	ORDER
vs.)	
)	
MIKE MAHONEY,)	
)	
Respondent.)	
)	

On April 25, 2005, United States Magistrate Judge Leif B. Erickson entered Findings and Recommendation in this matter. Petitioner did not timely object and has so waived the right to *de novo* review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error.

McDonnell Douglas Corp., v. Commodore Bus. Mach., Inc. 656 f. 2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Petitioner at the time of filing this petition was a state prisoner proceeding *pro se*. He filed this action pursuant to 28 U.S.C. § 2254, but the case is denied because his allegations of due process violations in regard to time served under a suspended

sentence are without merit. Judge Erickson's Findings and Recommendation are adopted in full.

There is no error in the decisions by the district court or the Montana Supreme Court in their application of Mont. Code Ann. § 46-18-201 (1989). As long as there is due process at the probationer's hearing, no constitutional violation occurs when a court revokes a suspended sentence and declines to credit time elapsed during probation to time served. See *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Hall v. Bostic*, 529 F.2d 990, 992 (4th Cir. 1975); citing *Thomas v. United States*, 327 F.2d 795, 797 (10th Cir. 1964), cert. denied, 377 U.S. 1000, 84 S.Ct. 1936, 12 L.Ed.2d 1051 (1964).

Based on the foregoing reasons, this Court adopts Judge Erickson's Findings and Recommendation in full.

Accordingly, **IT IS HEREBY ORDERED:**

Petitioner's Writ of Habeas Corpus is **DENIED**.

DATED this 8th day of June, 2006.

/s/ Donald W. Molloy
Donald W. Molloy, Chief Judge
United States District Court